The organisation of corruption in commercial enterprise:
Concealing (and revealing) the beneficial ownership of assets

Prof Liz Campbell, Durham University

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ABSTRACT

Corruption in commercial enterprise often is enabled and enhanced by the use of legal structures like companies, trusts and partnerships, so as to conceal the "beneficial ownership" of assets. Features of corporate opacity help to generate, conceal and maintain the resources necessary for many corrupt relations and actions. While there have been various legislative responses to this phenomenon recently, questions remain about these laws' likely effectiveness, as well as their implications for human rights.

INTRODUCTION

This chapter examines how corruption in commercial enterprise is enabled and enhanced by the deployment of ostensibly legal structures so as to conceal the "beneficial ownership" of assets. The opacity of different instruments can be exploited to generate, conceal and maintain the resources necessary for many corrupt relations and actions. This is prompting various legal amendments at the domestic and transnational level, in an effort to improve transparency and oversight and thus prevent and deter corrupt practices.

The assets that are necessary for and derive from corruption are often held in or transmitted through legal business structures and mechanisms, in what are termed generically as "corporate vehicles". These are "legal entities through which a wide variety of commercial activities are conducted and assets are held", including corporations, trusts, and partnerships with limited liability characteristics (OECD, 2001, pp. 12-13; FATF, 2006, p. 3). They share features like separate legal personality, in constituting legal persons separate from members or shareholders, and they often have limited liability characteristics, in that partners or shareholders are liable only for their investment and their personal assets will not be reachable by the entity's creditors. In most instances, corporate vehicles are used legally, but they can also be relied on to prevent the seizure or taxation of assets, to launder money, and to conceal the proceeds or payments from bribery, due to the very characteristics that make them valuable in legitimate contexts.

The crux of the issue in relation to corporate vehicles is their capacity to hide the true or ultimate "beneficial owner" of property that pays for or is the profit from corruption. The term, familiar to those of us in the common law world as referring to the beneficiary of a trust, is now used more broadly than its original usage to denote the person who will benefit from or can use particular assets. Issues of definition and scope of "beneficial owner" arise;

there is a lack of clarity in and inconsistency between jurisdictions as to the term's meaning (FATF, 2010, p. 28; United Nations Economic and Social Council, 2010, p. 17). An extensive literature explores the meaning of beneficial ownership (Becker *et al*., 2015; Collier, 2011). Rather than rehearsing or resolving these debates, I take a functionalist approach, centring on the control over assets and the benefit accrued. I endorse the view that beneficial ownership should not be interpreted in a narrow, formally legal sense (OECD, 2014), but rather should be understood "as a material, substantive concept—referring to the de facto control over a corporate vehicle" (van der Does de Willebois *et al*., 2011, p. 3).

Indeed, this is the approach of the European Union Fourth Anti-Money Laundering Directive (4AMLD), which came into force across the EU on 26 June 2017. Article 3(6)) describes "beneficial owner" as "the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted". The term is also referred to expressly, though not defied, in a number of international conventions and standards. Article 14(1)(a) of the United Nations Convention against Corruption stipulates that each State Party shall "institute a comprehensive domestic regulatory and supervisory regime … [with] requirements for customer and, where appropriate, beneficial owner identification". In addition, the non-binding but highly influential Financial Action Task Force (FATF) Recommendations,[1] refer direct to transparency and beneficial ownership of legal persons and arrangements (FATF, 2012). Recommendation 24 refers to need for "adequate, accurate and timely information on the beneficial ownership and control of legal persons" in preventing their misuse for money laundering or terrorist financing. Recommendation 25 requires such information on express trusts and provides that countries should consider "measures to facilitate access to beneficial ownership and control information by financial institutions". As is elaborated upon below, these encapsulate the position that access to information is key in identifying and addressing the problem of concealing the beneficial ownership of assets in the organisation of corruption in commercial enterprise.

In this chapter I map three different structures that can be used to hide beneficial ownership and thus to facilitate corrupt practices in otherwise legal commercial enterprise: companies, trusts and partnerships.[2] I consider why and how they are employed, examining their key characteristics. I critique the legal responses to this apparent misuse in the UK in particular, with reference to its different constituent jurisdictions, as well as commenting on the legal stimuli emanating from the European Union and other international organisations. Though the focus is predominantly domestic, the chapter's observations are widely relevant, as they speak to global policy and legal trends. Then I consider possible objections that might be raised to these legal changes, and seek to place them in a conceptual framework.

This chapter's analysis generates three major claims about the nature and scope of the responses to the concealment of beneficial ownership in the organisation of corruption in commercial enterprise. The first claim is that a strong and proportionate regime to identify beneficial ownership may be important to address corruption adequately, but will have questionable effect on the integrity of financial markets overall. The second claim is that

[1] The FATF Recommendations were issued first in 1990, and then revised in 1996, 2001, 2003 and 2012. In addition, FATF monitors its members' implementation and operation of AML measures, as well as vulnerabilities to money laundering.

[2] While other mechanisms (like hedge funds) are relevant, these are beyond the scope of this chapter.

further empirical work is needed to determine where scholarly and operational priorities should lie, in terms of the legal structures, jurisdictions and criminal actors: our focus on certain mechanisms and structures could well be misplaced. Finally, I suggest that ultimately, law alone will not (perhaps never) address this phenomenon, not least given the unavoidable and apparently intractable tension between market freedom/flexibility and responses to corruption.

THE CONTEXT

Concerns about the misuse of different legal entities for corrupt purposes and their ability to conceal the identity of the ultimate beneficiaries of property have been on the policy and policing agenda for a number of decades (T.M.C. Asser Instituut, 2000, p. 11). The Organisation for Economic Co-operation and Development observed in 2001 that

> "Almost every economic crime involves the misuse of corporate entities – money launderers exploit cash-based businesses and other legal vehicles to disguise the source of their illicit gains, bribe-givers and recipients conduct their illicit transactions through bank accounts opened under the names of corporations and foundations, and individuals hide or shield their wealth from tax authorities and other creditors through trusts and partnerships, to name but a few examples" (OECD, 2001, p. 3).

In the domestic UK operational sense, the National Crime Agency (NCA) (2016, paras. 90-93) stated last year that "high end money laundering" relies on corporate structures set up specifically with obscured beneficial ownership, in order to hide the nature and ownership of the funds. The NCA (2016, para. 111) further stressed that: "Bribe payers and recipients, intermediaries and professional enablers create and use corporate structures such as shell, subsidiary and subcontracting companies to channel bribe payments and the proceeds of corruption, as well as to obscure their criminal activity."

In the political setting, notions of transparency and misuse are to the fore, and momentum appears to be gathering in respect of the disclosure of beneficial ownership. The theme of the G8 Summit at Lough Erne in June 2013 was tax evasion and transparency of corporate ownership, and the "Beneficial Ownership Principles" were endorsed under David Cameron's leadership (Prime Minister's Office, 2013). Then in 2014 the G20 leaders adopted High Level Principles on Beneficial Ownership Transparency in Brisbane, declaring "financial transparency, in particular the transparency of beneficial ownership of legal persons and arrangements a 'high priority'" (G20, 2014). These concerns were given added impetus by the revelations in the Panama Papers in April 2016, followed closely by the political commitments made at the Anti-Corruption Summit in London, May 2016.

This rhetoric and increased political attention exemplify the perception that legal structures are deployed by individuals involved in corrupt practices to create, conceal and contain illegally obtained assets. What remains less clear is what types of structures are used, to what extent, and why; and what difference, if any, the intensified policy focus and rapidly changing legal terrain make.

CORRUPTION AND "CORPORATE VEHICLES": RESPONDING THROUGH LAW

Three different corporate vehicles will now be considered: companies, trusts and partnerships. Some of these structures are "on-shore", that is, located in the current jurisdiction, whereas others are off-shore, in being incorporated or registered in another jurisdiction, usually one with preferable rates of tax or simpler systems of incorporation. This cross-border dimension has implications for the responses to such abuse, and will be alluded to later in the chapter.

Companies

The use of commercial companies to facilitate and perpetuate criminality has long been recognised in both the academic and policy spheres (Schneider, 2004; Malm and Bichler, 2013; Petrunov, 2011; Matrix Knowledge Group, 2007, p. 39). This can involve otherwise legal firms as a front for criminal purposes, such as the use of a pre-existing company with a legitimate business to launder or conceal assets. It could also involve the creation of shell companies with a sole criminal objective, with no significant assets or operations at the time of incorporation. Indeed, a UK Cabinet Office study back in 2000 suggested that almost all complex UK money laundering schemes involved UK shell companies (Performance and Innovation Unit, 2000, p. 85). Once a company is formed, "nominee directors" may be installed while the identity of the actual beneficial owner(s) of the company is hidden (Performance and Innovation Unit, 2000, p. 86). Shell companies benefit from the reputation of UK (Performance and Innovation Unit, 2000, p. 86), insofar as there may be a presumption or façade of legitimacy. There is of course a tension between market imperatives and the need to prevent potential criminality, in that the ease of incorporation is seen as one of the strengths of the UK's competitive regulatory environment (Performance and Innovation Unit, 2000, p. 86).

There is some evidence that companies are used to hide and maintain the finances for corruption. The World Bank carried out research into 150 cases of large-scale corruption, finding that in the vast majority of them, a corporate vehicle was misused to hide the money trail, and the corporate vehicle in question was a company or corporation (van der Does de Willebois *et al*., 2011, p. 2). As yet, comparable data on the UK are missing.[3]

In an effort to respond to perceived exploitation of company secrecy, some recent legislative changes were made in the UK which may impact on the financing of and for corruption. Two of these will now be examined. In the first instance, Part 7 of the Small Business, Enterprise and Employment Act 2015 imposes requirements on companies to update more detailed information annually at Companies House. This has been amended subsequently to adhere to the requirements of the European Union's Fourth Anti-Money Laundering Directive.[4] Second, the Small Business, Enterprise and Employment Act 2015 limits who or indeed what can be a company director.

[3] See the findings of our current project on "The (Mis)Use of Corporate Vehicles by Transnational Organised Crime Groups in the Concealment, Conversion and Control of Illicit Finance".
[4] For further detail see Campbell, MLR 2017, forthcoming.

Under section 81 of the 2015 Act (as enacted originally), UK companies, limited liability partnerships and *societates europaeae* must maintain a register of "people with significant control" (PSC) and provide this to Companies House annually. This is a central, searchable and annually updated register, which can be used to determine who controls certain entities in the UK. "Significant control" (as defined in the rather complex Schedule 1A of the Companies Act 2006) includes holding directly or indirectly more than 25% of company's shares or voting rights, or having the right to appoint or remove a majority of the directors. It also includes an individual who exercises significant influence or control over a trust or firm which does not have separate legal personality and has significant influence or control over the company. Non-compliance is criminal. Failure to provide accurate information on a PSC register or to comply with notices requiring PSCs to provide information is a criminal offence for both the company and its officers, punishable by up to two years' imprisonment (Companies Act 2006, s.790F). The majority of companies and LLPs need to comply with the provisions or risk being convicted of a criminal offence (listed companies are broadly exempt as they are already subject to transparency obligations under the Financial Conduct Authority's Disclosure and Transparency Rules[5]). There is no statutory defence available to a company for breach of the provisions.

Article 30 of 4AMLD, to which the UK must adhere, requires EU member states to hold adequate, accurate and current information on the beneficial ownership of corporate and other legal entities incorporated within their territory in a central register, and provides that such information should be made available to specific authorities, organisations and those with a legitimate interest across the EU. Annual updating as provided for in the 2015 Act was not sufficient to meet 4AMLD's requirement for information to be "current", and so the Information about People with Significant Control (Amendment) Regulations 2017 introduced a requirement to notify changes in beneficial ownership within a shorter time frame. Entities must record changes to information on their PSC register within 14 days of obtaining the information and file that information within a further 14 days (Regulations 7 & 8). It is likely that in future EU Member States will need to put in place mechanisms to ensure the information in the register is also verified on a regular basis.[6]

Furthermore, Article 30(9) of 4AMLD provides for an exemption from access to beneficial ownership information in exceptional circumstances, such as where access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where s/he is a minor or otherwise incapable. There is no equivalent protection in the current UK scheme, so it remains to be seen both how this is enacted, and the extent to which it is used.

Though this registration initiative has laudable intentions, I suggest that its value is questionable, both in doctrine and implementation. In term of the technical content, the threshold of 25% is arbitrary and easily circumvented. When the European Union Third Anti-Money Laundering Directive (3AMLD) was agreed in 2005, a 25% baseline was deemed to be sufficient, following the example in the FATF Guidance on Transparency and Beneficial

[5] https://www.handbook.fca.org.uk/handbook/DTR.pdf

[6] European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC*, COM(2016) 450 final 2016/0208 (COD), 5 July 2016.

Ownership (which, however, was careful to note that its Recommendations do not specify the appropriate threshold) (FATF, 2014, p. 15). Article 43 of 3AMLD required the Commission to present a report to the European Parliament and the Council on the "possible expediency and consequences of a reduction … from 25% to 20%" (European Commission, 2012). Though the Commission contemplated whether such modification was appropriate, it was not changed in AMLD4. It is likely that this will be lowered to 10% for certain entities which present a specific risk of being used for money laundering and tax evasion.[7] This threshold, as indeed would be the case for any, can be circumvented by dividing the ownership into smaller elements by those who seek to hide ownership and control.

The second doctrinal concern is that the PSC register and attendant obligations apply to UK companies and LLPs only, and not to foreign entities operating within UK. This excludes a large subset from the reach of the Register. Third, the scheme hinges to a large extent on self-reporting, and maintenance and monitoring is likely to be onerous for Companies House. Unless resource for Companies House is increased, this scheme is not likely to be successful.

In terms of implementation, registries provide a valuable starting point in identifying, monitoring and addressing criminal behaviour, but they need to be complemented and corroborated by other data sources. As observed in the World Bank study (van der Does de Willebois *et al*., 2011, p. 5), they "are almost invariably archival in nature; they rarely conduct independent verification; and in many cases, they are already stretched for resources". They present a static outline of information that is likely to be partial and could possibly be false. Moreover, it is difficult, time consuming and expensive to verify the data within them.

Fenwick and Vermeulen (2016, pp. 18-19) have questioned rightly the "ratcheting up" of disclosure requirements in this way, on the basis that forcing more information into the public domain is unlikely to be useful and merely encourages new and more imaginative means of circumvention. They propose, on grounds of effectiveness, reputation and profitability, the "nudging" of firms to "embrace open communication" (2016, p. 41). While this is persuasive in respect of otherwise legitimate entities that sometimes may be engaged for illicit means, if the primary purpose of establishing the company is to provide a front for illegal activity, this aim is not feasible. No amount of nudging will offset or deter those with criminal and corrupt intentions.

The second significant legal change in UK company law, at least doctrinally, seeks to limit who or what can be a company director. At present, companies may appoint a corporate director as long as at least one of the directors is an individual (Companies Act 2006, s.155). Section 87 of the Small Business, Enterprise and Employment Act 2015 introduced a requirement for all company directors to be natural persons (unless the appointment falls within one of the exceptions that provided for by regulations made under s. 156B [Companies Act 2006, s.156A]) as part of the drive to ensure corporate transparency and facilitate more readily the identification of the true controllers/beneficial owners of the company. Though October 2016 was mooted as the date of enactment, this has been deferred, and the provision is not yet in

[7] European Commission*, Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC*, COM(2016) 450 final 2016/0208 (COD), 5 July 2016.

force. The Department for Business, Energy and Industrial Strategy held a consultation about this in early-2017; further action to taken has yet to be announced. So, what was heralded as a key measure to offset potential abuse has been postponed, and it is unclear when it will be introduced. Political rhetoric has not been matched by any action regarding the natural person requirement, thus rendering it no more than a paper exercise.

Trusts

The next structure to be considered is the trust, whose role and value in relation to money laundering and corruption has been emphasised in many studies (Blum *et al*., 1998, p. 95; European Commission 2000, p. 46; FATF, 2006, p. 61). Essentially, a trust is a common law construct that provides for the separation of legal ownership from beneficial ownership. It is a legitimate mechanism for transferring and managing assets, not least in relation to minors, incapacitated individuals, and charitable purposes. It comprises an agreement between two private parties, and "enjoy[s] a greater degree of privacy and autonomy than other corporate vehicles" (OECD, 2001, p. 25).

In addition to legitimate personal and financial planning purposes, the perception is that the trust can be employed for illicit ends, due to their autonomous and relatively unregulated nature, and their ability and purpose to conceal the identity of the beneficiaries (OECD, 2001, p. 25). Notwithstanding that, the World Bank review of 150 grand corruption investigations found that trusts were used infrequently (van der Does de Willebois *et al*., 2011, p. 44), comprising five percent of the corporate vehicles identified and appearing in c.15 percent of the investigations, mostly in Latin America, the Caribbean, and high-income nations. These findings may challenge the presumption about misuse of trusts. It is unclear whether this pattern would be replicated in the UK, and in respect of "smaller" corruption schemes, that is, whether there is a connection between the scale of the corruption and the trust used. Nonetheless, one must be mindful that the cases explored in the World Bank review are unlikely to be representative, given that they comprise cases under investigation and that the "successful" misuse of trusts may never come to light.

There is increased impetus from the EU to address the use of trusts for illegitimate purposes by means of transparency conditions, with strong support from NGOs like Global Witness (Global Witness, 2017). Article 31 of 4AMLD, as transposed into domestic UK law by Regulation 45 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, mandates the trustees of any express trust with tax consequences to hold adequate, accurate and up-to-date information on the beneficial ownership of the trust. HM Treasury explains that an "express trust" is one "that was deliberately created by a settlor expressly transferring property to a trustee for a valid purpose, as opposed to a statutory, resulting or constructive trust" (HM Treasury, 2017, 9.2). The original EU proposal was a public register for all trusts, but this faced resistance from the UK government, purportedly based on the grounds of protection of privacy, and of course the desire to protect a significant element of its wealth management industry (Society of Trust and Estate Practitioners, 2014). The UK negotiated so that the register must contains trusts with a tax consequence only and is access is limited to appropriate authorities. In contrast to the companies' beneficial owner register, the information is not publically available but can be accessed by law enforcement and the UK Financial Intelligence Unit. This register will be administered by Her Majesty's Revenue and Customs, which plans to launch it in summer 2017 as an online service.[8]

The same concerns about effectiveness of registers are of course salient here. The inherent nature of trusts is that they are private, autonomous, and difficult to monitor. Indeed, these characteristics provide major advantages over other structures in terms of profit maximisation and capital mobility, leading commentators to view them as embedding and maintaining wealth inequality (Harrington, 2017). Regardless, trusts will not be replaced or displaced, and thus the registers can only be partial in their effect. Those who wish to use trusts to hide assets and their origins will use ever more complex structures or front-persons to conceal the true beneficial owner.

Partnerships

The third corporate vehicle to be considered in respect of corruption in commercial enterprise is the partnership. Although partnerships are cited in OECD and FATF documentation as potentially problematic, in general it is perceived that they are not misused to the same extent as other corporate vehicles (OECD, 2001, p. 28). Like trusts, there may be a mismatch between their perceived vulnerability to corrupt use and the actual threat posed. There is particular concern about a form of partnership that is distinct to Scotland only, which appears to be employed with increasing regularity to conceal corrupt and illegal practices and assets.

The Scottish Limited Partnership (SLP) is like a general partnership, in that it comprises two or more partners who carry on business with a view to profit. In a general partnership all partners are jointly and severally liable for partnership debts, whereas in a limited partnership there are two types of partner, and there must be at least one of each. The general partners are liable for debts and obligations of the limited partnership, and the limited partners have liability limited to extent of their capital contributions. The advantage of the SLP is that it has a separate legal personality, unlike limited partnerships constituted elsewhere in the UK. This means that the SLP itself can own assets, enter into contracts, sue or be sued, own property, borrow money and grant certain types of security. Thus, SLPs are used in investment fund structures, and in tax structuring. The SLP's principal place of business must be in Scotland in order to become registered, but it is possible to migrate this to another jurisdiction following registration and for the SLP's activities to be managed offshore.

Though the SLP has a separate legal personality it has "tax transparency" in that it is taxed as though it did not have a separate legal personality, and no tax is payable by the SLP itself. Instead, partners are taxed on their share of partnership income and gains arrived at in accordance with their profit-sharing ratios. This "hybrid" status explains some of its appeal.

This popularity is represented in the trebling of their numbers since 2011, while there was a rise of less than 50% for partnerships south of the border (Department of Business, Energy and Industrial Strategy, 2017, p. 8). More than 100 firms named so far in the notorious Laundromat scheme are SLPs (Organized Crime and Corruption Reporting Project, 2017; BBC,

[8] https://www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters/hmrc-trusts-and-estates-newsletter-april-2017

2015). As result, there are increasing calls for reform of SLPs (Department of Business, Energy and Industrial Strategy, 2017).

While originally SLPs were not covered by the PSC register, the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 modifies the regime to apply them. Now a general partnership constituted under the law of Scotland that is a “qualifying partnership”, namely one with solely corporate partners, must deliver PSC information to Companies House. While this will serve to improve transparency to a degree, it does not apply to all SLPs. Again, the economic attractiveness of such partnerships means that their abolition or substantial amendment is highly unlikely.

CHAINS AND INTERMEDIARIES

The outline provided above of the distinctive features of certain corporate vehicles and their ability to hide assets linked to corruption indicates that the vehicles *per se* are not the (only) problem, rather it is their use in certain ways by certain people. Furthermore, the extent to which the recent and forthcoming legal changes will impact on corrupt behaviour and assets is questionable. This is brought into sharp relief by the use of “chains” or “ladders” (Shaxson 2011, 25) of corporate vehicles, spanning numerous different jurisdictions. This exploits the characteristics of anonymity of these structures, and confounds attempts to locate and confirm beneficial ownership. So, a rudimentary scheme might involve an international business company in Russia owned by another company in Ireland, which in turn is owned by a third entity in Scotland, controlled by a trust established in England. In reality, the schemes are much more complex: as the OECD (2001, p. 32) said, “The possible permutations are virtually limitless”. All of this serves to complicate and preclude successful investigations and actions such as asset recovery. Moreover, it underlines the weakness of some of the transparency provisions that have been introduced.

Of course, a critical dimension in hiding beneficial ownership through complex chains of corporate vehicles lies in the reliance on professional intermediaries, such as company formation agents, lawyers, and trust and company service providers (TCSPs) (FATF, 2006). Though their service is not required to establish a company in the UK, legal, accounting and financial advice will be useful in respect of all corporate vehicles used to store and move illicit assets. This professional expertise is particularly desirable in respect of the construction of offshore entities. There will be a spectrum of knowledge, motivation and intention in respect of TCSPs whose services are connected with the organisation of corruption, ranging from fully lawful yet unethical behaviour; lack of awareness as to the aims of their clients; careless or negligence in failing to carry out due diligence, through to deliberate enabling and facilitation.

In terms of legal responses, registered UK TCSPs need to be compliant with the Money Laundering Regulations 2017 regarding customer due diligence and suspicious activity reporting. When a TCSP is forming a company for a client, it must carry out due diligence, even if this is the only transaction being carried out for that customer (Regulation 4(2)). Moreover, HM Revenue and Customs recently issued TCSPs with notices under Paragraph 1, schedule 23 of the Finance Act 2011 to provide information regarding the ultimate beneficial ownership of offshore companies and beneficial interest in offshore partnerships and trusts

(HM Revenue & Customs, 2017). This is in an effort to ascertain who should be paying tax and to what level. However, measures like the PSC register will not capture all the entities handled by UK TCSPs, underlining how the legal landscape is patchy in its reach and application.

Overall there is intensifying practitioner and academic consideration of professional facilitators of serious crime (Europol, 2013, p. 14; Home Office, 2013, p. 14). That said, and more specifically, the evidence base regarding TCSPs and the organisation of corruption in the UK is very limited. The World Bank review found inconsistency in terms of implementation by TCSPs of AML requirements, and differences between the form of structure: professional trustees tend to be more inquisitive about the source of funds to be vested in a trust than they would be if establishing a company (van der Does de Willebois *et al*., 2011, p. 47). Whether this holds for the UK and a broader range of corrupt practices remains to be seen.

OBJECTIONS TO LEGAL CHANGES

It appears that there is political unanimity as to the need to respond robustly to these ways of organising corruption in commercial enterprise. Regardless, one can contemplate some objections, both principled and pragmatic, to the current and proposed legal responses, centring on human rights, effectiveness, and unintended consequences.

In the first instance, these measures have serious potential implications for civil liberties, whether we see that as limited to the "human rights of bad guys" (Ivory, 2014) or more broadly. Registers of personal data engage and potentially breach the right to privacy, as protected by Art 8 ECHR. The level of detail, the accessibility and the purpose for which the data is stored are all relevant here.

In addition to a successful challenge in the French courts to a public trust register on the grounds of manifest disproportionality,[9] concerns been raised by European Data Protection Supervisor (2017), and in scholarly commentary (Noseda, 2017) about the implications for privacy of these registers. The European Data Protection Supervisor expressed concern about breach of the data protection principle of purpose limitation, on the basis that proposed amendments from the EU will introduce policy purposes other than countering anti-money laundering and terrorism financing. Regardless, it is unlikely that any comparable legal challenge could be raised to the current corporate PSC register in the UK, on the basis that this is a proportionate response to a legitimate aim. Moreover, the trust register, by virtue of its limited accessibility, is also likely not to fall foul of challenge.

It is debateable how effective and impactful these legal responses will be. There is a lack of uniformity in legal doctrine in the UK. Beyond this, there are issues of statutory implementation, wherein the rhetoric around counter-corruption and transparency is not matched by application of the law. Moreover, the degree to which legal measures will be effective unless matched by sufficient resources is dubious. Beyond this, there is evident inconsistency between jurisdictions, leading to "criminogenic asymmetries" (Passas, 1999)

[9] Décision n° 2016-591 QPC du 21 Octobre 2016.

which are likely to steer decisions about the placement and use of assets implicated in corrupt practices.

On that point, significant questions remain about the degree to which the UK is serious about addressing the situation in its Overseas Territories and Crown Dependencies. As outlined, the UK is perceived to have a strong legal framework in respect of transparency, though its implementation and application is inconsistent. Beyond this, there is valid concern about UK Overseas Territories and Crown Dependencies, such as the British Virgin Islands and the Cayman Islands, though there is little solid political action (Martini and Murphy, 2015). Notably, Jason Sharman has found that there is a mismatch between perception and empirical data, in that high-income OECD countries are more problematic than so-called offshore centres in that "Not only do the world's major financial centers offer tighter secrecy, but corporate entities formed therein enjoy a status, standing, and legitimacy that are far less likely to arouse suspicion than those from stigmatized offshore locales" (Sharman, 2010, p. 139).

Furthermore, there are potential issues relating to the unintended and unpredictable consequences of such legal changes. As noted, legal and operational asymmetries between and within jurisdictions leads to crime displacement in terms of the location of assets and formation of structures. Moreover, it is conceivable that enhanced legislative and law enforcement responses will lead a "tactical displacement effect" (Rowe *et al*., 2013, p. 6), insofar as corrupt actors will rely on alternative means to reduce the risk of apprehension, perhaps through the increased use of intermediaries.

MAKING SENSE OF THESE CHANGES

What appears to be occurring in this context is the addressing of the ostensibly criminal problem of corruption through mostly non-criminal law means. Such a way of dealing with corruption and other forms of financial crime was once unorthodox but is now commonplace – rather than the traditional criminal law mechanism of investigation and prosecution, here we have a "follow the money" (King, 2013) or at least a "target the money" approach. It is significant that this is not necessarily a precursor to prosecution, but rather can be a way of disrupting corrupt practices, and of ascertaining the connections and nodes between criminal actors, and politically exposed persons.

It is thought that tightening the rules around beneficial ownership can serve as a deterrent to potentially criminal actors as well as otherwise professional facilitators. Ultimately it makes monies less secure if they cannot be disguised and hidden effectively. Then, if identified, civil forfeiture and confiscation can permit the recouping of such assets, as contemplated by Article 31 UNCAC. Having said that, all of this is predicated upon the notion that there is money or property to recoup, which overlooks the "spend and go" habits of many criminals (Naylor, 2002); (Steinko, 2012). Thus, this approach is likely to impact on a certain set and level of corrupt actors only, which is likely to omit those insulated by virtue of status, or political position or connection.

The legal responses outlined in this chapter are both driven and implemented by a mix of state and non-state actors, relying on a combination of criminal and civil measures. This way of addressing problematic behaviour may be regarded as holistic and inventive, though runs the risk of being uneven in coverage and unprincipled in purpose. It is instructive to recall the observations of Julia Black (2001, p. 105) in relation to "command and control" regulation, as this sheds some light on the legal changes described above. In "command and control" regulation the State is "centred" and is envisaged as having the sole capacity to command and control, with a linear progression from policy formation through to implementation. The legal responses to the hiding of beneficial ownership in relation to corruption retain what Black reminds us is often denoted negatively by the term "command and control": poorly targeted, rigid, ossified, under- or over-enforced rules, involving unintended consequences. That aside, in structure and purpose they seem to denote a move away from such regulation to a more diversified and participatory style. This (perhaps more charitable) understanding of the drive to reveal beneficial ownership is that a form of regulatory "decentring" (Black, 2001, p. 106) is taking place, exemplified by the situation regarding the proposed requirement that all company directors to be natural persons. After the UK Government realised that it had insufficient knowledge to be able to identify the form and cause of the problem and to design an appropriate solution, it reopened a consultation through the Department for Business, Energy and Industrial Strategy. A less optimistic interpretation might view this as an official *volte-face* after pushback from the business community.

One could also view these legal responses as embodying both symbolic and practical dimensions. In the words of David Garland (2001, p. 105), the State more and more is faced with a "criminological predicament" and so is required to *adapt* to the "new reality" of crime control. Responsibilising companies and other third parties in the context of counter-corruption and money laundering depicts this changing notion of governmentality, whereby the State is developing a form of rule which involves "the enlistment of others … and the creation of new forms of co-operative action" (Garland, 2001, p. 125). Simultaneous to this practical objective, the legislative activity exemplifies the notion that "something must be done" (Garland, 2001, p. 164), regardless of its effect.

CONCLUDING REMARKS

While a strong and proportionate regime to reveal beneficial ownership seems to be helpful in addressing corruption in commercial enterprise, it is less clear as to whether this will have any impact on the development and functioning of financial markets (Halliday, Levi and Reuter, 2014; Alldridge, 2008), as is often asserted (Vermeulen, 2013). Indeed, much more empirical work is needed to determine where our legal and operational priorities should lie, in that our focus on certain jurisdictions, actors and mechanism could well be misplaced and thus a distraction from the core problem. The law alone will not address the problem of the hiding of beneficial ownership in relation to corruption, not least given the unavoidable and apparently intractable tension between market freedom and effective regulation.

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